HEN CHEAN SENG & ANOR.

v.

PUBLIC PROSECUTOR

FEDERAL COURT, KUALA LUMPUR
RAJA AZLAN SHAH LP, GEORGE SEAH FJ, ABDOOLCADER J
[CRIMINAL REFERENCE NO. 1 OF 1983]
29 JANUARY 1983

CRIMINAL LAW AND PROCEDURE: *Constitutional questions - Whether Federal Territory part of Malaysia and the Federal Territory High Court law fully constituted.*

The High Court has in this case referred to the Federal Court under s. 48(4) of the Courts of Judicature Act 1964 on two Constitutional questions:

(1) whether the Federal Territory is an integral part of Malaysia.

(2) whether the High Court in Malaya sitting in the Federal Territory is lawfully constituted.

Held:

[1] Article 2(a) of the Constitution provides that Parliament may by law admit other States to the Federation, and 'State' in Article 2(a) is defined in Article 159(6) of the Constitution to include any territory. Act A206 is indeed for the purpose of Article 2(a) of the Constitution such a law admitting to the Federation the Federal Territory by s. 4 thereof which vests the Federation with sovereignty and all power and jurisdiction over, in and in respect of the Federal Territory which was established by Act A206 as Article 1(4) of the Constitution specifically states.

[2] Article 2(a) of the Constitution read in the light of the definition of 'State' in Article 159(6), Act A206 and the provisions of Article 1 of the Constitution, considered together and in that order, clearly manifest the position that the High Court in Malaya has jurisdiction in the Federal Territory.

[3] The Federal Court accordingly declared an emphatic 'aye' in answer to the two questions presented for determination and in conclusion expressed the Court's concern that it had been thought at all necessary to raise the first question which would *ex facie* purport to posit the preposterous proposition that the Federal Territory is *res nullius* or no man's land.

[Questions answered in the affirmative.]

Case referred to:
Merdeka University Berhad v. Government of Malaysia [1981] CLJ (Rep) 191, [1981] 2 MLJ 356

Legislation referred to:
Constitution Amendment No. 2 Act 1973, ss. 3, 4, 6(1)
Courts of Judicature Act 1964, s. 48(4)
Federal Constitution, arts. 1(2), (4), 2(a), 121(1)(a), 159(6)

For the applicants - Karpal Singh (Ngeow Yin Ngee with him)
For the respondent - Shaik Daud, DPP

JUDGMENT

Raja Azlan Shah LP:

The High Court has in this case made a reference to this Court under s. 48(4) of the Courts of Judicature Act 1964 on two Constitutional questions:

(1) Whether the Federal Territory is an integral part of Malaysia.

(2) Whether the High Court in Malaya sitting in the Federal Territory is lawfully constituted.

By Part 1 of and the Schedule to the Constitution (Amendment (No. 2) Act, 1973 (Act A206) which came into force on 1 February 1974 the Federal Territory was constitutionally excised from the territory of the State of Selangor (s. 3) and constituted as a territory *per se* with jurisdiction in respect thereof vested in the Federation shall exercise sovereignty over the Federal Territory and all power and jurisdiction in or in respect of The Federal Territory shall be vested in the Federation. Article 1(2) of the Federal Constitution enumerates the States of the Federation and the exclusion of the Federal Territory from the State of Selangor is provided for in Article 1(4) of the Constitution which was added by Act A206. Article 2(a) of the Constitution provides that Parliament may by law admit other States to the Federation, and 'State' in Article 2(a) is defined in Article 159(6) of the Constitution to include any territory. Act A206 is indeed for the purpose of Article 2(a) of the Constitution such a law admitting to the Federation the Federal Territory by s. 4 thereof which vests the Federation with sovereignty and all power and jurisdiction over, in and in respect of the Federal Territory which was established by Act A206 as Article 1(4) of the Constitution specifically states.

Mr. Karpal Singh for the applicants at whose behest this reference was made says at the outset that if the answer to the first question posed is in the affirmative it will not be necessary to deal with the second question. We should however add that in respect of the second question the answer is clearly provided for in the provisions of s. 6(1) of Act A206 [as amended by the Constitution (Amendment) (No. 2) (Amendment) Act, 1976 - Act A335] which prescribes that any written law existing and in force in the Federal Territory shall continue to be in force therein until repealed, amended or replaced by laws passed by Parliament. The Courts of Judicature Act is such a written law existing and in force in the Federal Territory prior to 1 February 1974 and the local jurisdiction of the High Court in Malaya as defined in s. 3 of that Act clearly applied to the Federal Territory when it was still within the State of Selangor previous to the operation of Act A206 and continues to so apply by virtue of the provisions of s. 6(1) of Act A206. On the point taken in respect of Article 121(1)(a) of the Constitution as to the vesting of judicial power in the High Court in Malaya for the States of Malaya, Article 2(a) of the Constitution read in the light of the definition of 'State' in Article 159(6), Act A206 and the provisions of Article 1 of the Constitution, considered together and in that order, clearly manifest the position that the High Court in Malaya has jurisdiction in the Federal Territory, and in the event any contention to the contrary would seemingly divest the High Court in Malaya of any judicial power or jurisdiction throughout the States of Malaya as Article 121(1)(a) of the Constitution specifically prescribes that the High Court in Malaya shall have its principal registry in Kuala Lumpur, the status of which is in issue in the question referred to us.

We accordingly declare an emphatic 'aye' in answer to the two questions presented for determination by us and would only in conclusion express our concern that it has been thought at all necessary to raise the first question which would *ex facie* purport to posit the preposterous proposition that the Federal Territory is *res nullius* or no man's land, in which event we would be sitting, in the words of Abdoolcader J, in *Merdeka University Berhad v. Government of Malaysia* [1981] CLJ (Rep) 191, [1981] 2 MLJ 356 in the middle of nowhere!

Also found at [1983] 1 CLJ 230